



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

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OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT FOLLOWING COURT REMAND OF 6 GHZ BAND ORDER

ET Docket No. 18-295
GN Docket No. 17-183

Initial comments due: 30 days after publication in the Federal Register
Reply comments due: 45 days after publication in the Federal Register

By the Acting Chief, Office of Engineering and Technology:

In this *Public Notice*, the Office of Engineering and Technology invites comments in connection with the remand by the United States Court of Appeals for the District of Columbia Circuit of the Commission's *6 GHz Report and Order*.¹ On February 22, 2022, the court issued its mandate.²

The Commission's *6 GHz Report and Order* "open[ed up] the entire 6 GHz band [(5.925–7.125 GHz)] for unlicensed indoor lower power access points."³ The Commission found that "[t]hese access points will be ideal for connecting devices in homes and businesses such [as] smartphones, tablet devices, laptops, and Internet-of-Things devices to the Internet."⁴ The Commission adopted several requirements to "protect the various incumbent-licensed services in the band, including fixed microwave services, various other fixed and mobile services, and fixed-satellite services."⁵

Among other things, the *6 GHz Report and Order* required that the operation of devices relying on indoor low power access points be: "(1) limited to indoor operation"⁶ whereby "the signals transmitted by these unlicensed devices will be significantly attenuated when passing through the walls of buildings[;]"⁷ "(2) required to use a contention-based protocol,"⁸ such as a "listen before talk . . .

¹ *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (*6 GHz Report and Order*), *aff'd in part and remanded in part*, *AT&T Servs. Inc., v. FCC*, 21 F.4th 841, 853-54 (D.C. Cir. 2021) (*AT&T*).

² *AT&T Servs., Inc., v. FCC*, Nos. 20-1190, et al., (D.C. Cir. Feb. 22, 2022).

³ *6 GHz Report and Order*, 35 FCC Rcd 3852, 3860, para. 18.

⁴ *Id.* at 3854, para. 3.

⁵ *Id.* at 3888, para. 98. As the Commission observed, commenters representing these incumbents (e.g., communications services providers, electric utilities, public safety service entities, and broadcasters) participated in the underlying rulemaking proceeding. *See, e.g., id.* at 3859, para. 16.

⁶ *Id.* at 3888, para. 99.

⁷ *Id.* at 3889, para. 100. The Commission adopted additional measures designed to ensure low power indoor devices are only operated indoors and thereby prevent harmful interference. *Id.* at 3891, para. 107.

⁸ *Id.* at 3888, para. 99.

scheme[;]”⁹ and “(3) subject to low-power operation,”¹⁰ which, as relevant here, means “a maximum radiated power spectral density of 5 dBm per 1 megahertz.”¹¹ The Commission concluded that “the[se] restrictions and requirements . . . for indoor use of low power access points eliminat[e] any significant risk of causing harmful interference.”¹²

Petitioners representing licensed commercial wireless service providers, electric utilities, public safety entities, and broadcasters operating in the 6 GHz band sought judicial review, asserting that the *6 GHz Report and Order* contravened the Communications Act of 1934, as amended, and the Administrative Procedure Act.¹³

The D.C. Circuit largely rejected these challenges. Holding that “petitioners have failed to provide a basis for questioning the Commission’s conclusion that the [*6 GHz Report and Order*] will protect against a significant risk of harmful interference,” the court “den[ied] the petitions for review in all respects save one.”¹⁴

The one issue as to which the court granted review involved a claim by the National Association of Broadcasters (NAB) “that because mobile operators frequently work indoors, the provisions of the [*6 GHz Report and Order*] designed to restrict low-power routers to indoor operation offer mobile licensees little protection”¹⁵, and that therefore, the Commission should have “reserve[d] a sliver of [the 6 GHz] band exclusively for mobile licensees.”¹⁶ In support of its claim, NAB argued that “after the Commission allowed unlicensed access in the 2.4 GHz band, ‘a contention-based protocol . . . failed to protect . . . licensed users[,] rendering that band partially unusable.’”¹⁷

The court ruled that “[t]he Commission never responded to [NAB’s] complaints about interference in the 2.4 GHz band,” and that “[a]lthough the Commission cited a study to support its conclusion that the [*6 GHz Report and Order*] sufficiently protects mobile operators, that study does not rebut the Association’s claims about interference in the 2.4 GHz band.”¹⁸ The court nevertheless declined to vacate the *6 GHz Report and Order*, observing that “[i]t is conceivable that the Commission may be able to explain why its experience in the 2.4 GHz band supports its ability to protect licensed mobile operators from harmful interference”¹⁹ and agreeing with the Commission that “vacating this order would be incredibly disruptive given the fact that devices have already started to be deployed”²⁰

In this *Public Notice*, we seek comment on NAB’s arguments in the Commission’s proceeding regarding broadcasters’ experience in the 2.4 GHz band, how that experience relates to the kinds of contention-based protocol operations prescribed for indoor use in the 6 GHz rules, and whether the 2.4 GHz experience warrants reservation of a portion of the 6 GHz band for mobile indoor operations or any

⁹ *Id.* at 3889, para. 101.

¹⁰ *Id.* at 3888, para. 99.

¹¹ *Id.* at 3889-90, para. 103.

¹² *Id.* at 3907, para. 146.

¹³ *AT&T*, 21 F.4th at 843 (citing 47 U.S.C. § 151, *et seq.*, 5 U.S.C. §706(2)(A)).

¹⁴ *Id.*

¹⁵ *Id.* at 853.

¹⁶ *Id.*

¹⁷ *Id.* (internal citation omitted).

¹⁸ *Id.*; *see also 6 GHz Report and Order*, 35 FCC Rcd at 3915, para. 168.

¹⁹ *AT&T*, 21 F.4th at 854.

²⁰ *Id.* at 854-55 (citing *Allied-Signal, Inc., v. Nuclear Regulatory Commission*, 988 F.2d 146, 151 (D.C. Cir. 1993)).

other modification to the Commission's 6 GHz rules. We emphasize that, in light of the limited scope of the court's remand, we do not seek comment on any other aspects of the *6 GHz Report and Order*.

Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Ex Parte Rules. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

²¹ 47 C.F.R. §§ 1.1200 *et seq.*

Further Information. Questions regarding this *Public Notice* may be directed to Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636 or Nicholas.Oros@fcc.gov.